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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,529	12/11/2001	Cody L. Lambert		9028

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EXAMINER
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VANTERPOOL, LESTER L

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/922,529	LAMBERT, CODY L.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Lester L. Vanterpool	3727	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 June 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 3 – 5 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The

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claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

4. Claims 1, 3 – 5 should be single sentences. Appropriate action is required.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2 4 & 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawler et al., (U.S. Patent Number 5516020) in view of Vega (U.S. Patent Number 5082120). Lawler et al., discloses the square tubular steel base (24); the plurality of cold rolled upright rods (14) welded onto the square tubular steel base (24), the upright rods (14) are spaced at intervals to provide wheel receiving slots (18 & 20) to accommodate mountain bikes, road bikes BMX bikes, and motocross dirt bikes.

However, Lawler et al., does not disclose the steel base and the upright steel rods.

Vega teaches the steel base (68) and the upright steel rods (14) (See Abstract) (See Figure 1) for the purpose of providing strength durability.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the steel base and the upright steel rods as taught by Vega with the bicycle storage of Lawler et al., in order to enhance product strength durability.

Regarding claim 2, Lawler et al., further discloses the mounting means (34) and mounting the bicycle storage rack (10) in the upright fixed position (See Column 4, lines 53 – 60) (See Figures 1 – 4).

Regarding claim 4, Lawler et al., further discloses the bicycle to be stored in the upright position and does not require the removal of the front or rear wheels from the bicycle (See Figures 2 – 4).

Regarding claim 5, Lawler et al., further discloses the bicycle storage rack (1) can be mounted or removed without the need of special tools from the cargo area of the pick-up truck (42) (See Abstract); wherein, allowing the use as the free standing rack (10) for the use of the storing bicycle on any flat surface (See Figure 1).

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lawler et al., (U.S. Patent Number 5516020) in view of Vega (U.S. Patent

Number 5082120) as applied to claim 1 above, and further in view of Allen et al., (U.S. Patent Number 6431423). Lawler et al., discloses the pair of cold rolled upright rods (14) in which the wheel of the bicycle are inserted into the slots (18 & 20) formed by upright rods (14) of the bicycle storage rack (10) (See Figures 1 – 4); wherein, securing the bicycle in each set of upright slots (18 & 20) to the bicycle storage rack (10) (See Figures 1 – 4 & 8).

However, Lawler et al., does not disclose the upright steel rods.

Vega teaches the upright steel rods (14) (See Abstract) (See Figure 1) for the purpose of providing strength durability.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the upright steel rods as taught by Vega with the bicycle storage of Lawler et al., in order to enhance product strength durability.

However, Lawler et al., as modified does not disclose the spring-loaded J-Hook assembly constructed to fit around the rim of the bicycle; wherein, the J-Hook assembly is attached to the bicycle storage rack by means of the flat stock bracket.

Allen et al., teaches the spring-loaded (50) J-Hook assembly (16) (See Figures 1 & 2) constructed to fit around the rim of the bicycle (104) (See Figure 1); wherein, the J-Hook assembly (16) is attached to the bicycle storage rack by means of the flat stock bracket (18) (See Figures 1 – 6) for the purpose of providing anti-theft security and reducing excess movement.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the spring-loaded J-Hook assembly constructed to fit around the rim of the bicycle; wherein, the J-Hook assembly is attached to the bicycle storage rack by means of the flat stock bracket as taught by Allen et al., with the bicycle storage of Lawler et al., in order to enhance anti-theft security and reduce excess movement.

### ***Conclusion***

8. This action is a **final rejection** and is intended to close the prosecution of this application. Applicant's reply under 37 CFR 1.113 to this action is limited either to an appeal to the Board of Patent Appeals and Interferences or to an amendment complying with the requirements set forth below.

If applicant should desire to appeal any rejection made by the examiner, a Notice of Appeal must be filed within the period for reply identifying the rejected claim or claims appealed. The Notice of Appeal must be accompanied by the required appeal fee of \$250.00.

If applicant should desire to file an amendment, entry of a proposed amendment after final rejection cannot be made as a matter of right unless it merely cancels claims or complies with a formal requirement made earlier. Amendments touching the merits of the application which otherwise might not be

proper may be admitted upon a showing a good and sufficient reasons why they are necessary and why they were not presented earlier.

A reply under 37 CFR 1.113 to a final rejection must include the appeal from, or cancellation of, each rejected claim. The filing of an amendment after final rejection, whether or not it is entered, does not stop the running of the statutory period for reply to the final rejection unless the examiner holds the claims to be in condition for allowance. Accordingly, if a Notice of Appeal has not been filed properly within the period for reply, or any extension of this period obtained under either 37 CFR 1.136(a) or (b), the application will become abandoned.

Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.



Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lester L. Vanterpool whose telephone number is 571-272-8028. The examiner can normally be reached on Monday - Friday (8:30 - 5:00) EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*LLV*

LLV  
September 13, 2006

*Jes F. Pascua*  
**JES F. PASCUA**  
**PRIMARY EXAMINER**